

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Establish an  
Appropriate Error Rate for Connections Made by  
an Automatic Dialing Device Pursuant to Section  
2875.5 of the Public Utilities Code.

Rulemaking 02-02-020  
(Filed February 21, 2000)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

Pursuant to Article 2.5 of the Rules of Practice and Procedure, this Scoping Memo and Ruling discusses the category, need for hearing, scope and schedule of this rulemaking proceeding, pursuant to Rules 6(c)(2) and 6.3.

**Background**

On February 27, 2002, the Commission issued this Order Instituting Rulemaking (OIR) with two goals in mind: (1) to establish an acceptable error rate, if any, for connections made by automatic dialing devices for which no agent or telemarketer is available for the person called, and (2) to establish record-keeping procedures applicable to those who use automatic dialing devices. These objectives are mandated by Assembly Bill (AB) 870 (Ch. 877, Stats. 1978), which added Section 2875.5 to the Public Utilities Code.

Pursuant to the OIR, comments were filed on March 14, 2002, and reply comments were due on March 25, 2002. Comments supporting a zero error rate were filed by the California Attorney General; the California Department of Consumer Affairs; Private Citizen, Inc.; and, jointly, by The Utility Reform

Network, the Utility Consumers' Action Network and the Commission's Office of Ratepayer Advocates. Comments supporting some form of acceptable error rate were filed by AT&T Communications of California, Inc.; Pacific Bell Telephone Company; Worldcom, Inc.; the California Newspaper Publishers Association; the American Teleservices Association; Sprint Communications Company L.P.; Verizon California Inc. and Verizon Long Distance; and Sytel Limited.

### **Scope of the Proceeding**

The issues to be considered in this proceeding are:

1. What should be the acceptable error rate for automatic dialers that are the subject of AB 870?
2. When receiver is off-hook, within how many seconds must a live operator respond or automatic dialer disconnect?
3. What rules should be adopted regarding the establishment, retention and access to business records for calls covered by AB 870?
4. Should workshops be scheduled to further consider record-keeping requirements and the need for a public information campaign?

### **Schedule**

The schedule for this proceeding is as follows:

<b>Date</b>	<b>Event</b>
March 14, 2002	Opening Comments
March 25, 2002	Reply Comments
No later than April 15, 2002	Assigned Commissioner's Scoping Memo
May 6, 2002	Proposed Decision
May 28, 2002	Comments on Proposed Decision
June 3, 2002	Reply Comments

June 6, 2002	Decision on Commission Agenda
--------------	-------------------------------

It is my goal to have a decision in place on or before July 1, 2002, that establishes an acceptable error rate, as required by AB 870. Proceedings beyond that, if any, will be completed within 18 months from the date that the OIR was filed, pursuant to Senate Bill 960, Section 13. At this time, I foresee no extraordinary circumstances that would warrant an extension of the schedule.

### **Category of Proceeding and Need for Hearing**

The Commission categorized this proceeding as quasi-legislative. (OIR Ordering Paragraph 2.) This ruling confirms that the categorization is quasi-legislative. In a quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement. (Rule 7(d).) The ruling, only as to category, may be appealed under the procedures in Rule 6.4.

The Commission preliminarily determined that this proceeding will not require a formal hearing. (OIR Ordering Paragraph 3.) This ruling confirms that no formal hearing will be held at this time.

### **Final Oral Argument**

A party in a quasi-legislative proceeding has the right to make a final oral argument before the Commission, if the final oral argument is requested within the time and in the manner specified in the Scoping Memo or later ruling. (Rule 8(d).) In this proceeding, motions for final oral argument must be filed and served by May 10, 2002, and responses to the motions for final oral argument must be filed and served by May 17, 2002. If a motion for oral argument is granted, oral argument would be scheduled for June 3, 2002.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
2. This proceeding is quasi-legislative and is not scheduled for hearing.
3. Ex parte communications are permitted.

Dated April 11, 2002, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated April 11, 2002, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.